

Letter of Findings Number: 02-20130140
Income Tax
For Tax Periods March 31, 2010 & March 31, 2011

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ISSUE

I. Adjusted Gross Income Tax—Apportionment Calculation.

Authority: IC § 6-8.1-5-1(c); [45 IAC 3.1-1-42](#).

Taxpayer protests the Department's apportionment calculation.

STATEMENT OF FACTS

Taxpayer, a corporation domiciled in another state, is a retail vendor of software. Taxpayer was audited by the Indiana Department of Revenue ("Department") for adjusted gross income tax for the periods March 31, 2010, and March 31, 2011. As a result of the Department's audit, Taxpayer was assessed proposed tax. Taxpayer protested the Department's proposed assessment. A telephone hearing was held, and this Letter of Findings results. Further facts will be presented as required.

I. Adjusted Gross Income Tax—Apportionment Calculation.

DISCUSSION

Taxpayer's protest letter, dated February 1, 2013, states that the Department "adjusted the numerators to tie directly to the Indiana sales tax returns." The protest letter further states:

There are various and sundry differences between the sales reported for income taxes and those reported for sales taxes, most notably the treatment of deferred income. Deferred revenue may not be recognized for income tax purposes in a current year but are generally reportable for sales tax purpose regardless of revenue recognition rules that apply to income tax.

We believe the numbers originally reported on our Corporate Income Tax returns were correct. However, if you [Department] insist upon changing the numerator of our sales factor to tie to sales tax returns, then fairness, equity, common sense and the law, would require that the denominator be calculated in a consistent matter.

According to Taxpayer at the hearing, the Department's adjustments were only to the numerator. Taxpayer argues that the same method should have been used for the denominator too.

The Audit Report, regarding "Sales/Receipts Factor Numerator: Indiana sales" noted "[s]ome discrepancies were observed when Indiana sales for the audit period reported for sales tax purposes on IN Forms ST103 were compared with Indiana sales reported for purposes of apportionment" The Audit Report then states, "An audit adjustment is proposed to reconcile these amounts, consistent with the requirements of [45 IAC 3.1-1-42](#)."

[45 IAC 3.1-1-42](#), cited to in the Audit Report, states:

Consistency in Reporting. In filing returns with this state, the taxpayer's valuation and treatment of property as business or nonbusiness property must be consistent from year to year. It must also be consistent with the taxpayer's treatment of such property for purposes of returns filed with other states having apportionment statutes and regulations substantially similar to Indiana's. If the taxpayer's Indiana returns are not consistent in these respects, the returns should disclose the nature and extent of the inconsistency.

Regarding the "Sales/Receipts Factor Denominator: Total Sales/Receipts Everywhere," the Audit Report states:

Discrepancies also were observed between sales and other business receipts reported for federal income tax purposes on US 1120 and for purposes of Indiana apportionment on IN IT20, Schedule E.

At the hearing, the Department asked Taxpayer to provide supporting documentation to substantiate Taxpayer's argument. Taxpayer was provided additional time to provide the Department with the documentation. The Department, however, did not receive the requested documentation from Taxpayer. Under IC § 6-8.1-5-1(c), the burden of proving a proposed assessment wrong rests with the taxpayer. In the case at hand, Taxpayer has not met its burden of proof.

FINDING

Taxpayer's protest is denied.

Posted: 08/28/2013 by Legislative Services Agency

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